

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(Amendment)

401 KAR 8:600. Secondary standards.

RELATES TO: KRS 224.10-100, 224.10-110 [~~Chapter 224~~], 40 C.F.R. [~~Part~~] 143, EO 2008-507, 2008-531 [(1995)]

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 C.F.R. [~~Part~~]143 [(1995)], 42 U.S.C. A 300f, 300g, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce the administrative regulations adopted by the secretary for the administrative regulation and control of the purification of water for public and semipublic use. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. [~~The Safe Drinking Water Act, as amended by the Safe Drinking Water Act amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising primary enforcement responsibility.~~] This administrative regulation establishes [~~provides~~] maximum contaminant levels [~~;~~] and requirements for the sampling and testing for contaminants that [~~which~~] do not have a direct impact on the health of consumers, but may discourage the utilization of drinking water or discredit

1 the supplies. Provisions for these contaminants are referred to as "secondary standards". This
2 administrative regulation establishes sampling schedules and requires public water systems to
3 modify treatment to comply with maximum levels set by the federal regulation. Federal
4 regulations leave monitoring frequency and consequences for exceeding secondary standards to
5 primacy agency discretion. [~~This administrative regulation conforms to, and is no more stringent~~
6 ~~than, federal regulations.~~]

7 Section 1. Sampling, Analysis, Reporting, and Treatment for Secondary Contaminants. (1) A
8 [~~Applicability. All suppliers of water for~~] public [~~and semipublic drinking~~] water system that treats
9 groundwater or surface water [~~systems~~] shall sample for secondary contaminants in accordance
10 with 40 C.F.R. 143.1 through 143.4, with the following additions: [~~at the direction of the cabinet.~~]

11 (a) [~~(2) New sources of water.~~] An analysis for secondary [~~these~~] contaminants shall be
12 performed if [~~when~~] a new source of water supply is proposed to the cabinet for preliminary
13 approval pursuant to 401 KAR 8:100, Section 1. Excessive amounts of these contaminants or
14 excessive costs for [~~of~~] their removal shall [~~may~~] be grounds for rejection of the proposed source
15 of water.

16 (b) An [~~(3) Existing sources of water.~~] existing public water system that treats groundwater or
17 surface water [~~producers of water~~] shall sample for, analyze [~~and make analysis for~~], and report
18 the secondary contaminants listed in 40 C.F.R. 143.3 annually, or if consumer complaints indicate
19 the presence of one (1) or more of these contaminants. [~~this section, at the frequency prescribed by~~
20 ~~the cabinet.~~] Treatment shall be adequate to assure that the secondary contaminant level does not
21 exceed the maximum level limits established [~~set forth~~] in 40 C.F.R. 143.3. [~~this administrative~~
22 ~~regulation.~~]

23 (c) A sample shall [~~(4) Sampling point. Samples may~~] be taken from each entry point to the

- 1 distribution system. ~~[a free-flowing tap in the distribution system, except that hydrogen sulfide~~
- 2 ~~(H₂S) shall be measured at the entry point to the distribution system.~~
- 3 ~~(5) Secondary contaminant maximum levels. The following lists the maximum allowable~~
- 4 ~~levels of secondary contaminants:~~

CONTAMINANT	LEVEL
Aluminum	0.05 TO 0.2 MG/L
Chloride	250 mg/l
Color	15 color units
Copper	1.0 mg/l
Corrosivity	Noncorrosive
Fluoride	2.0 mg/l
Foaming agents	0.5 mg/l
Iron	0.3 mg/l
Manganese	0.05 mg/l
Odor	3 threshold odor number
pH	6.5-8.5
Silver	0.1 mg/l
Sulfate	250 mg/l
Total dissolved solids (TDS)	500 mg/l
Zinc	5 mg/l

- 5 ~~(6) Sample collection and measurement technique. Samples shall be taken and analyzed in~~

1 accordance with 40 CFR 141.23(k) and 143.4, in effect on July 1, 1995, hereby adopted without
2 change.]

3 Section 2. [~~(7) Secondary contaminants maximum limits exceeded.~~] If a secondary maximum
4 contaminant level established in 40 C.F.R. 143.3 [~~any of the secondary contaminant maximum~~
5 ~~allowable levels limit as set forth in this administrative regulation,~~] is exceeded by a supplier of
6 water, the cabinet may direct that supplier to modify the treatment procedure or to locate a more
7 suitable source of water if the exceeded contaminant level results in violations of the primary
8 drinking water standards or consumer complaints.

9 [~~(8) Public water systems which exceed secondary maximum contaminant levels for fluoride,~~
10 ~~but do not exceed the primary maximum contaminant level as stipulated in 401 KAR 8:250, shall~~
11 ~~notify the public pursuant to 401 KAR 8:070, except the notice required for all billing units shall~~
12 ~~be annual, the notice to all new billing units shall be at the time service begins, and the state public~~
13 ~~health officer shall be notified.~~]

401 KAR 8:600 Secondary Standards approved for promulgation:

Date

Henry “Hank” List, Deputy Secretary, FOR
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2009 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 16, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 8:600

Contact Person: Peter T. Goodman, Assistant Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation sets out requirements for monitoring and analyzing secondary contaminants in public water systems.
- (b) The necessity of this administrative regulation:** KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. This administrative regulation sets forth requirements for monitoring and analyzing secondary contaminants in public water systems.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** Secondary contaminants are contaminants that, while they may not pose a public health threat, may make consumption of the water unpleasant and cause consumers to avoid using the public water system.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation:** The amendments to this administrative regulation remove federal language from the state regulation and substitute federal citations. Decisions about how often monitoring for secondary standards shall take place, and what will happen if standards are exceeded, which the federal regulation leaves to state primacy agency discretion, are set forth in this regulation.
- (b) The necessity of the amendment to this administrative regulation:** KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The amendments to this regulation remove federal language from the state regulation and substitute federal citations instead. This will assist in adopting changes to federal monitoring and analytical requirements for secondary standards.
- (c) How the amendment conforms to the content of the authorizing statutes:** KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The amendments to this regulation remove federal language from the state regulation and substitute federal citations for secondary contaminant standards.
- (d) How the amendment will assist in the effective administration of the statutes:** Secondary contaminants are contaminants that, while they may not pose a public health

threat, may make consumption of the water unpleasant and cause consumers to avoid using the public water system. Control of these contaminants will assist public and semipublic water systems in maintaining high customer satisfaction with the quality of the water.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** This administrative regulation affects 482 public and 52 semipublic water systems.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**

 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** Public and semipublic water systems shall monitor for secondary contaminants annually, or when customer complaints indicate such contaminants are present. Systems that exceed secondary maximum contaminant levels may have to change treatment or sources of water to comply with standards.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** Monitoring costs for secondary contaminants are approximately \$275 per set of samples. Costs for treatment of secondary contaminants will vary, but could range from the cost of a chemical feed pump and drum of chemical product to the installation of full treatment or the development of a new water source.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** Public water systems will benefit from working with the cabinet to meet these requirements as opposed to having to answer to the U. S. Environmental Protection Agency. Secondary contaminants are contaminants that, while they may not pose a public health threat, may make consumption of the water unpleasant and cause consumers to avoid using the public water system. Control of these contaminants will assist public and semipublic water systems maintain a high level of customer satisfaction with the quality of the water.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**

 - (a) Initially:** The cabinet already requires this monitoring. No additional cost will be realized.
 - (b) On a continuing basis:** There will be no additional costs.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation?** The Cabinet uses federal funds granted to carry out the provisions of the Safe Drinking Water Act.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:** No additional fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or directly or indirectly increased by the provisions of this administrative regulation.

(9) IERING: Is tiering applied? (Explain why or why not)

Yes. This regulation varies requirements between public and semipublic water systems.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 8:600

Contact Person: Peter T. Goodman, Assistant Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes X No

If yes, complete questions 2-4.

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This administrative regulation applies to public water systems using surface water or groundwater as a source. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. 40 C.F.R. 143 establishes guidelines for water systems to monitor for secondary contaminants.

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet already carries out the requirements of this administrative regulation. No additional cost will be realized.

(d) How much will it cost to administer this program for subsequent years? No additional cost will be realized.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 8:600

Contact Person: Peter T. Goodmann, Assistant Director

1. Federal statute or regulation constituting the federal mandate.

40 C.F.R. 143.1 through 143.4

2. State compliance standards.

KRS 224.10-100(28), 224.10-110(2)

3. Minimum or uniform standards contained in the federal mandate.

40 C.F.R. Part 143 establishes guidelines for public water systems and states to carry out monitoring for secondary contaminants in public water systems.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

The amendment to this administrative regulation does not introduce any requirement more stringent than the federal regulation. However, this administrative regulation establishes more specific rules. Although this administrative regulation follows guidance set forth in the federal regulation, the specific monitoring frequencies, and consequences for exceeding maximum secondary contaminant levels, left by the federal regulation to the discretion of the state primacy agency, are set forth in this administrative regulation. This regulation also extends to semipublic systems.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Public and semipublic water systems will benefit from knowing specifically what monitoring will be required and what consequences will be faced if secondary maximum contaminant levels are exceeded. In addition, public and semipublic water systems will benefit from assuring their customers a high quality of pleasing, safe water.